

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS	:	MDL No. 2002
ANTITRUST LITIGATION	:	Case No: 08-md-02002
	:	
	:	
THIS DOCUMENT APPLIES TO	:	
ALL DIRECT PURCHASER ACTIONS	:	
	:	

DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT NUCAL FOODS, INC., FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES OF THE SETTLEMENT, AND FOR LEAVE TO FILE A MOTION FOR ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Class Plaintiffs ("Plaintiffs") respectfully move the Court to: (1) preliminarily approve a settlement between Plaintiffs and Defendant NuCal Foods, Inc. ("NuCal") as set forth in the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendant NuCal Foods, Inc." ("Agreement" or "Settlement Agreement"), attached as Exhibit 1 to the Declaration of James J. Pizzirusso; (2) certify of a class for purposes of the Settlement Agreement; and (3) grant Plaintiffs leave to file a motion for attorney's fees and for reimbursement of expenses.

This motion is based on the accompanying Memorandum of Law in Support and the Declaration of James J. Pizzirusso submitted herewith, and is made on the following grounds:

1. The Settlement falls within the range of reasonableness, *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013), and is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," the applicable standards for preliminary approval of a class action settlement, *see In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004) (citation omitted).
2. The Settlement Agreement will provide the proposed class with valuable cash consideration, and requires NuCal to cooperate with Plaintiffs in the continued litigation of the case, as described in the Settlement Agreement and accompanying

memorandum. Interim Co-Lead Counsel believe that this will greatly assist them in further analyzing and prosecuting the claims this Action. *See In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

3. The Settlement is fair to the Class as a whole, treats Class Representatives the same as other Settlement Class members, and requires Interim Co-Lead Counsel to seek Court approval of an award for attorneys' fees and expenses from the Settlement Amount.
4. The Settlement is the result of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 (citations omitted); *Thomas v. NCO Fin. Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).
5. The Settlement Agreement was negotiated and executed after fact discovery was significantly advanced.
6. The expense and uncertainty of continued litigation against NuCal, and the likelihood of appeals, militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005).
7. The Settlement Class, as defined in the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

Dated: August 28, 2014

Respectfully submitted,

/s/ Steven A. Asher

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